In the High Court Uttaranchal, at

Nainital.

Second Appeal No. 59/2006

Shambhu Dutt Joshi S/o Daya Kishan Joshi
R/o Malla Vishua, P.O. Ganiyadhioli, Tehsil
Ranikhet, District Almora ... Appellant.

Vs.

Forest Panchayat, Lalla Vishua
Through its Sarpanch, Deep Chandra Joshi
S/o Dhani Ram Joshi,
R/o Village Malla Vishua,
P.O. Ganiyadhioli, Tehsil Ranikhet,
District Almora ...Respondent.

Hon'ble B.C. Kandpal, J.

This Second Appeal has been preferred against the judgment and order dated 20-6-2006, passed by the District Judge Almora, in Civil Appeal No. 9 of 2003 Shambhu Dutt Vs. Forest Panchayat Vishua, dismissing the appeal and upholding the judgment and order of the trial court.

2- The brief facts of the case are that the Forest Panchayat Vishua filed a suit against the appellant/defendant Shambu Dutt Joshi with the allegations that the defendant encroached one Nali Eight Muthis of plot No. 739 belonging to Van Panchayat and raised illegal construction. Against the illegal encroachment, proceedings under the U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972 were initiated and he was evicted from the land. The Defendant filed the appeal before the District Judge Almora and the Appellate Court allowed the appeal and directed that the proceedings could not be

taken up under the provision of the aforesaid Act and observed that the plaintiff may be file regular suit. The defendant again encroached 3 Nalis 8 Muthis land of the plaintiff and again constructed two rooms and a Guashala on the land in the year 1998. Hence the plaintiff filed original suit before the Civil Judge (S.D.) Almora for removal of unauthroized constructions and handing over possession of the land to the plaintiff and damages @ Rs. 100/- per annum.

3- The defendant's case is that the proceedings under the U.P. Public Premises Act were drawn in regard to the disputed land and the District Judge has allowed his appeal, hence the suit is not maintainable. It was also alleged that the land in dispute belongs to the State Government and the State was not made party in the suit hence the suit was bad for non-joinder of necessary party. It is also the case of the defendant that the Forest Panchayat has not authorized Deep Chandra to file the suit and the suit is not maintainable.

4- The trial court framed relevant issues in this case and thereafter parties led evidence in support of their cases. The trial court on perusal of the evidence on record and having heard the learned counsel for the parties decreed the suit and directed the defendant to remove his unauthorized occupation from the land within one month. He was also restrained not to interfere in the possession of the Forest Panchayat.

5- Feeling aggrieved the defendant filed appeal before the District Judge, Almora, which was dismissed vide impugned judgment and order dated 20-6-2006.

6- Now the defendant has come in second appeal before this court.

7- Heard Sri T.A. Khan, learned counsel for the appellant on the point of substantial question of law involved in this second appeal and perused the record.

8- Learned counsel for the appellant has contended that the land in dispute belongs to State Government and the State was necessary party in the suit but the State has not been made party to the suit. It is also submitted that the suit is not maintainable on the ground that the District Judge has allowed the appeal filed against the eviction order in respect of the disputed land and the Van Panchayat has no locus to bring the suit.

9- Undisputedly the disputed land is agricultural land and the revenue record of the said land has been maintained. This land was entrusted to the Management of the Panchayat and as such it is not the public premises. Therefore, the State is not the necessary part in the case. So far as the maintainability of the suit is concerned the District Judge in appeal has held that the Prescribed Authority did not have the jurisdiction U/S 4 of the U.P. Public premises Act to take action for eviction and the appeal was allowed on the ground of jurisdiction and observed that the remedy of the Van Panchayat was by way of suit.

10- The lower appellate court has recorded concurrent finding on the issues raised on behalf of the defendant/appellant and I do not find any infirmity in the impugned judgment and order. The judgment and

order passed by the lower appellate court shows it has discussed all the factual aspects and the evidence relating to the relevant facts involved in this case. The factual aspect is not to be interfered with in the second appeal. I also do not find any substantial question of law in the instant case.

11- The second appeal lacks merit and is liable to be dismissed.

12- Accordingly the second appeal is dismissed in limine.

(B.C. Kandpal, J.)

Dated: 22-09-2006.

ISB